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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 27th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 27 August 1990, at 10 a.m.

Chairman: Mr. TÜRK

later: Mrs. MBONU

CONTENTS

Expression of sympathy on the occasion of the accident in the Kreka mine in Bosnia-Herzegovina, Yugoslavia

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* The summary record of the second part (closed) of the meeting appears as document E/CN.4/Sub.2/1990/SR.27/Add.1.

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CONTENTS (continued)

The administration of justice and the human rights of detainees (continued)

(a) Question of the human rights of persons subjected to any form of detention or imprisonment

(b) Question of human rights and states of emergency

(c) Individualization of prosecution and penalties, and repercussions of violations of human rights on families

(d) The right to a fair trial

Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (continued)

The meeting was called to order at 10.15 a.m.

EXPRESSION OF SYMPATHY ON THE OCCASION OF THE ACCIDENT IN THE KREKA MINE IN BOSNIA-HERZEGOVINA, YUGOSLAVIA

1. Mrs. WARZAZI, together with Mr. ALFONSO MARTÍNEZ and Mr. KHALIL, expressed to the Yugoslav Government, to the families of the victims and to the Chairman of the Sub-Commission, the Sub-Commission's feelings of sympathy on the occasion of the recent accident in the Kreka mine in Bosnia-Herzegovina, Yugoslavia.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

(a) QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

(c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES

(d) THE RIGHT TO A FAIR TRIAL (agenda item 10) (continued) (E/CN.4/Sub.2/1990/20 and Add.1, 21, 22, 23, 25, 26 and Add.1 and 2, 27, 29, 33 and Add.1 and 2, 34 and 54; E/CN.4/Sub.2/1990/NGO/1, 4 and 18; E/CN.4/1990/14; E/CN.4/Sub.2/1989/23, 27, 28, 29 and 30/Rev.1)

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS (agenda item 11) (continued) (E/CN.4/Sub.2/1990/35; E/CN.4/Sub.2/1988/20/Add.1 and Add.1/Corr.1)

2. The CHAIRMAN announced that the Sub-Commission had decided to make public the following decisions adopted in the closed part of its 26th meeting on 24 August.

(a) "On the grounds of human rights and humanitarian law, the Sub-Commission on Prevention of Discrimination and Protection of Minorities strongly appeals to the Government of Iraq to permit and to facilitate the immediate departure from Kuwait and Iraq of the nationals of third countries";

(b) "The Sub-Commission on Prevention of Discrimination and Protection of Minorities, gravely concerned at the reported refusal of the Israeli authorities to allow Mr. Faisal Husseini, Mr. Ghassan El-Khatib and Dr. Feryal Agha to leave the country to attend the Seventh United Nations International NGO Meeting on the Question of Palestine, to be held at Geneva from 29 to 31 August 1990, which will be preceded by the Fourth European Regional NGO Symposium (27-28 August, Geneva), strongly appeals to the Israeli authorities not to hamper the participation of the above-mentioned Palestinian panelists at the aforementioned meetings."

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3. Mr. TEITELBAUM (American Association of Jurists) said that he was extremely concerned at the fact that the Working Group on Detention had not agreed to incorporate the paragraph excluding military jurisdiction, as proposed by the American Association of Jurists, in the draft declaration on enforced or involuntary disappearances. The absence of a provision of that type was contrary to the aims of the draft declaration and of other international instruments. By failing to explicitly exclude military jurisdiction, the draft actually allowed scope for impunity, since the military courts which, in many countries, were recognized as competent to try military personnel charged with violations of human rights had never held a member of the armed forces responsible for disappearances or similar offences. However, the enforced or involuntary disappearance of a person constituted an offence under criminal rather than military law, and military jurisdiction should apply only to specifically military offences and not to criminal offences, even if the latter were committed by military personnel. In fact, that had already been stipulated in the draft declaration on the independence and impartiality of the judiciary, which the Commission on Human Rights had recommended to States and the importance of which had been emphasized by the General Assembly.

4. In its report (E/CN.4/1990/13), the Working Group on Enforced or Involuntary Disappearances also indicated that "perhaps the single most important factor contributing to the phenomenon of disappearances may be that of impunity" (para. 344) and added that "military courts contribute significantly to impunity, in the Working Group's experience" (para. 345). However, at the last moment, article 17 of the draft declaration had been supplemented by a paragraph of which it could be said that the cure was worse than the ailment, since the draft had previously made no mention of special jurisdictions.

5. The American Association of Jurists felt that it was totally unacceptable that the persons responsible for enforced disappearances should be tried by military courts which were neither independent nor impartial. In its view, the omission was so serious and the arguments put forward in that connection were so evident that it believed that the Sub-Commission should approve the text that it was proposing to add to the third paragraph of article 17 of the draft, as set forth in paragraph 20 of document E/CN.4/Sub.2/1990/NGO/1.

6. The judiciary's lack of independence was a world-wide problem which affected the developed as well as the developing countries, as could be seen in Italy in the case of the judges assigned to investigate the Mafia and the drug or arms traffic; in France in the case of the assassination of Ali Mecili, a lawyer of Argentine origin; and in the United States, where the judiciary, although enjoying a well-deserved reputation for independence, was not entirely impartial, as had been noted by several non-governmental organizations. With regard to Switzerland, the Sub-Commission should closely monitor the question of the assassination of Rajavi, since the Swiss Government's passivity at the diplomatic level, in spite of the serious accusations made by the examining magistrate, gave cause to suspect interference in judicial activities. Moreover, in El Salvador, the judicial inquiry into the assassination of six Jesuits and two women last November had virtually reached a dead-end.

7. The American Association of Jurists therefore fully supported the idea that the Sub-Commission should undertake the task of checking and verifying the independence and impartiality of the judiciary. To that end, it suggested that the Sub-Commission should appoint a working group, the composition of which should take account of the socio-cultural and juridical characteristics of the various regions of the world.

8. Mr. SACHAR, referring to Mr. Joinet's report (E/CN.4/Sub.2/1990/29), said that it was not sufficient to draw up a list of violations; as a dissuasive measure, it would be advisable to designate by name the countries in which the violations in question occurred. Like Mr. Joinet, he thought that administrative detention should not exist. Nevertheless, since it formed part of the constitutional or legislative system of most countries, the manner in which the scope of its application could be reduced should be considered.

9. Mr. Joinet regarded detention as "administrative" if it "had been ordered by the executive alone" (para. 22). However, the Indian Constitution stipulated that that form of detention must be provided for by law. The person detained must be acquainted with the reasons for his detention within five days from the date of his arrest. Moreover, an advisory council consisting of three members must look into the validity of the grounds of that arrest. That procedure provided some safeguards, even though it did not fully guarantee respect for the rights of the detainee.

10. Mr. Joinet had also raised the question of whether, in that regard, there should be an intangible right of appeal to a court. The Indian Constitution stipulated that, even in a state of emergency, the right to apply to a court for a writ of habeas corpus could not be suspended. With regard to the right to legal counsel, the Indian Constitution stipulated that any person under arrest had the right to consult his lawyer, and courts had often ordered the release of persons who had been denied that right. Furthermore, explanations must be given to the detainee, in his own language, concerning all the important documents relating to his case and, if the advisory council or the Government refused to consider a petition within the prescribed time-limit, the court could dismiss the case. Those were important provisions which, in Mr. Sachar's opinion, should be incorporated in all domestic laws.

11. With regard to the study by the Inter-American Commission on Human Rights, he suggested that the laws of India, Pakistan and Sri Lanka should be taken into account, since they contained extremely interesting provisions. In Pakistan, for example, the Supreme Court had even ruled that the proclamation of martial law could be declared unlawful.

12. The brief report on the right to a fair trial (E/CN.4/Sub.2/1990/34) indicated that the accused had the right to be informed of all the evidence that the Department of Public Prosecutions intended to present in substantiation of the criminal charges brought during the hearing (para. 71). As had been emphasized by Mr. Chernichenko and Mr. Treat, the authors of the report, that was an indispensable guarantee of a fair trial. That guarantee existed in India, in which the law also stipulated that every person under arrest must appear before a magistrate within 24 hours.

13. Turning to the Secretary-General's report containing the information submitted by Governments (E/CN.4/Sub.2/1990/20), he noted that Finland had reported a recent legislative amendment under which any person arrested, imprisoned or sentenced without cause was entitled to damages. The Sub-Commission could draw on that provision in its work, since, in fact, that right should be recognized.

14. There was also another way to guarantee respect for individual rights, known as "letter jurisdiction" in India. The courts could act simply on receipt of a letter from a non-governmental organization, for example, drawing attention to an illegal detention, non-payment of salary, etc. In that way, underprivileged groups, which would not otherwise have access to justice due to the technicalities of the legal system, could ensure that their rights were respected.

15. He thought that, in the final analysis, the independence of the judiciary depended on the members of the judiciary itself since, regardless of the safeguards provided, it was they who were ultimately responsible for asserting their independence. Nevertheless, there was a need for institutional mechanisms to protect their independence. In general, judges could not be dismissed but the procedures for their appointment were extremely important. In practice, those procedures varied and the most satisfactory solution was undoubtedly to assign that task to an independent body, such as a judicial commission consisting of judges and eminent personalities.

16. Mr. GUISSE said that, in his view, the independence of the judiciary actually meant that everyone should be able to apply to a court capable of safeguarding his rights and guaranteeing that he was treated in the same way as all other members of society. Within the judicial system, a distinction should be made between, on the one hand, public prosecutors, who were responsible for defending the public interest and, to that effect, received directives from the executive authority, while nevertheless enjoying a certain freedom of action and, on the other hand, judges who were the true holders of judicial power and received instructions from no authority. In practice, the theoretical independence of judges was subject to various conditions, such as security of employment, the physical security of the judge and his family and a material security ensured by an adequate income. Accordingly, the question had many facets, and he agreed with the American Association of Jurists that it would be useful for the Sub-Commission to monitor and verify independence and impartiality of the judiciary.

17. Mrs. Mbonu took the Chair.

18. Mrs. BAUTISTA noted that administrative detention frequently gave rise to a range of violations of the rights of the detainee. The practice should therefore be discouraged and made subject to clearly specified safeguards. In cases in which that kind of detention might be justifiable, on cogent security grounds, for example, the persons concerned should have the right to consult lawyers and physicians and to see members of their family; they should also have the right to apply for a writ of habeas corpus, which should not be suspended, even during states of emergency. The identity of detainees should not be kept secret and disappearances and summary executions should be

prohibited. Moreover, any confessions or statements extracted by force should be declared inadmissible. Finally, detainees should not be permitted to waive their rights, unless they did so on the advice of a lawyer chosen by them.

19. The independence of the judiciary was essential for the promotion of respect for human rights. In the appointment of members of the judiciary, their competence and integrity, as well as their commitment to the cause of human rights, should be the primary considerations. They should be recommended to the appointing authority by a respected board of eminent jurists.

20. Mr. FLINTERMAN, speaking on agenda item 10, emphasized that, from the standpoint of the protection of human rights, the number of international bodies was less important than the measures taken at the national level and the existence of an independent judiciary. He therefore fully approved the conclusions and recommendations of Mr. Joinet's report (E/CN.4/Sub.2/1990/35) and hoped that the draft resolution on the item under consideration, if adopted, would enable Mr. Joinet to continue his work along the lines suggested in paragraph 76 of his report.

21. In many countries, the provisions of international instruments had not yet been incorporated in domestic law. Therefore, as the Commission on Human Rights had requested in resolution 1990/81, those countries should be assisted through the preparation of model texts for national legislation. The Sub-Commission, as a body of independent experts, could play a very meaningful role in that regard.

22. The question of intangible rights had been touched upon in Mr. Joinet's report on the practice of administrative detention (E/CN.4/Sub.2/1990/29) and also in that of Mr. Chernichenko and Mr. Treat on the right to a fair trial (E/CN.4/Sub.2/1990/34). He supported Mr. Joinet's suggestion that an in-depth study should be undertaken on the right to apply for a writ of habeas corpus, as well as the suggestion by Mr. Chernichenko and Mr. Treat that the right to a fair trial should be declared intangible. He was also in favour of following up the suggestion that the Commission should establish a working group to study the various aspects of detention: administrative detention, juvenile detention, judicial detention, displaced persons, etc. That suggestion should be reflected in a draft resolution.

23. With regard to Mr. Despouy's report on the question of human rights and states of emergency (E/CN.4/Sub.2/1989/30/Rev.1), he fully supported the suggestion that model legal provisions should be developed in that field, since it was primarily in times of emergency that the protection of human rights and human dignity should rest on a firm legal basis. In that regard, he believed that, in all situations of emergency, only the judiciary should be competent to assess the emergency measures to be taken against individuals. Even in a state of emergency, military courts should never have the power to try civilians.

24. Referring to the brief report by Mr. Chernichenko and Mr. Treat on the right to a fair trial (E/CN.4/Sub.2/1990/34), he said that the scope of that study should extend to administrative proceedings, in which the most fundamental human rights were often at stake.

25. In conclusion, he paid tribute to the endeavours made by the non-governmental organizations which, far from confining themselves to abstract notions of justice, were commendably dealing with everyday human problems.

26. Mr. HATANO, referring to the brief report on the right to a fair trial (E/CN.4/Sub.2/1990/34), said that, in future, that study should deal not only with the relevant provisions of international instruments but also with those in force in various countries. For example, the jury system existed in some countries but not in others and a knowledge of the actual practice in each State would be helpful in order to formulate commonly acceptable international standards.

27. He agreed with the authors of the report that the concept of a "fair trial" concerned both criminal and civil proceedings and that certain principles should be applied in every court, regardless of whether it was an ordinary, emergency, military, juvenile or other court. For his part, he would add that those principles should also be applied in all court proceedings, including civil service disciplinary proceedings. Moreover, although the reference to the "Nuremberg and Tokyo tribunals", as examples of "international courts dealing with cases related to human rights", seemed rather out of place, he agreed with the authors of the report that the principle of the right to a fair trial should also apply to post-war military tribunals.

28. The question of public hearings, the importance of which had been stressed in paragraphs 41 and 48 of the report, should be studied carefully in order to determine the extent to which television, radio and photographic coverage should facilitate openness in trial proceedings.

29. A distinction should be made between "evidence obtained by improper means" as referred to in paragraph 56 of that report, and "evidence obtained illegally", as referred to in paragraph 94, since the question of the admissibility of evidence obtained in those ways was extremely important.

30. He supported the recommendations contained in paragraphs 146 to 151 of the report, and particularly that contained in paragraph 146, namely that Mr. Chernichenko and Mr. Treat should be assigned to work jointly on a study on the right to a fair trial. However, he wondered whether Governments should not also be requested to reply to a questionnaire on their legal and other provisions and practices in respect of a fair trial. It might also be useful to send a similar questionnaire to interested non-governmental organizations.

31. Mr. DESPOUY requested Mrs. Bautista, the author of the report on the situation of international civil servants (E/CN.4/Sub.2/1990/30), to provide further details concerning those who, having been recruited at the local or international levels, were serving in countries in which restrictions were imposed on the entry or departure of foreigners. Moreover, what was the situation of those who were prevented from continuing to work? Did they incur the risk of dismissal, for example? What had been done to reintegrate those who had been detained and subsequently released? Finally, what sanctions could be envisaged against a State in which international civil servants were

detained? For example, would it be appropriate to cease recruiting personnel holding that State's nationality or to demand payment of compensation in respect of the damage suffered?

32. With regard to the brief report on the right to a fair trial (E/CN.4/Sub.2/1990/34), he referred to chapter V of that document, which dealt with that right as a non-derogable right, even in states of emergency. He pointed out that, in fact, all the international instruments provided for the possibility of detention without charge or trial. On the other hand, even in such situations, no derogation was permitted from some legal safeguards, such as habeas corpus, or from the procedural safeguards needed to ensure the effective enjoyment of some non-derogable rights, such as the right to life, the right to protection from torture, etc. Finally, even in states of emergency, the standards and guarantees of impartiality remained in force, since no trial would be possible without them. The Constitution of Namibia was exemplary in that regard, in so far as it provided a series of safeguards in the event of administrative detention.

33. Mr. Türk resumed the Chair.

34. Mr. ILKAHANAF said that he had only a few comments to make on the report on the practice of administrative detention (E/CN.4/Sub.2/1990/29). He felt that high priority should be accorded to the study and the analysis recommended in paragraph 15 (c) and (d), since it was important to have practical examples of real situations. The study should also look more closely at the duration of detention, since there was no information about the practice of many countries on that aspect. Likewise, with regard to the nature and condition of premises used for detention, a list should be drawn up of isolated places and areas of detention which were conducive to inhuman, cruel or degrading treatment. Very little information was available on the frequency and duration of that type of detention or its effects on detainees. Moreover, he fully supported the recommendation concerning the need for the appointment of a rapporteur on all forms of detention.

35. With regard to item 11, he pointed out that, contrary to what might be assumed, judges and lawyers were particularly vulnerable to all sorts of pressure. For example, they were the favourite target of armed groups, such as death squads, drug traffickers, security forces and other paramilitary groups competing to impose their will. The Sub-Commission should discharge the monitoring task that had been assigned to it and, in particular, should investigate the extent of the protection afforded to judges and lawyers, 430 of whom had been killed, detained or harassed in 45 countries during the past year, as had been pointed out by the International Commission of Jurists. The Sub-Commission should develop an effective mechanism to monitor the application of the basic principles under which persons responsible for the administration of justice should be able to carry out their duties in full peace of mind.

36. Mr. MAXIM said that, in view of their relevance, agenda items 10 and 11 should continue to engage the attention of the Sub-Commission. It would be very helpful if all persons engaged in the administration of justice were acquainted with the international standards relating to human rights and with the obligations undertaken by States in that regard. In particular, it was essential that police and prison officers, as well as members of the armed

forces who played a leading role during states of emergency, should be fully familiar with those standards. States should also be called upon to revise the internal regulations of penal institutions to bring them into line with international standards.

37. Mr. SADI thanked Mr. Chernichenko and Mr. Treat for their excellent report (E/CN.4/Sub.2/1990/34) and said that he was pleased to learn that they would be continuing their work. They should be requested to study the procedures for monitoring states of emergency, since the question had a close bearing on the right to a fair trial, as well as ways and means by which those countries that resorted to states of emergency too frequently and too readily could be reminded of their obligation to respect their international commitments.

38. With regard to the rights of detainees, one should not be content with the replies by Governments concerning the manner in which those rights were protected in their countries; Governments should be invited to establish systems for the judicial inspection of places of detention. Ways of improving those systems and of involving United Nations agencies in the process also needed to be examined.

39. Finally, he invited the special rapporteurs to look into the problem posed by the scandalously frequent recourse to the pretext of a procedural irregularity during investigations or trials in order to avoid their continuation and the punishment of the guilty parties. Mere questions of form should not preclude the punishment of criminals.

40. Mr. EIDE said that the questions that were being considered under agenda items 10 and 11 constituted the backbone of the entire human rights system and it was regrettable that the Sub-Commission had so little time to devote to them. However, the progress that had been achieved through the efforts of the rapporteurs and working groups showed that the Sub-Commission was endeavouring to take wide-ranging action to promote the equitable administration of justice with a view to ensuring that all individuals were protected from unacceptable conditions of detention and ill-treatment. In particular, he welcomed the draft declaration on enforced or involuntary disappearances drawn up by the Working Group on Detention.

41. With regard to the special rapporteurs, Mrs. Bautista should be encouraged to continue her work on the situation of United Nations staff members (E/CN.4/Sub.2/1990/30) and on the application of international standards concerning the human rights of detained juveniles (E/CN.4/Sub.2/1990/8).

42. With regard to Mr. Joinet's updated report on administrative detention (E/CN.4/Sub.2/1990/29), the analytical framework that had been established, particularly in chapters IV and V of that document, was extremely useful and made it easier to understand the problem. He strongly endorsed the recommendation made in paragraph 82, concerning the preparation of a special report on the development of the practice of administrative detention throughout the world which, as had been rightly pointed out in paragraph 84, would supplement the special reports on the protection of intangible rights (prohibition of enforced or involuntary disappearances, torture and summary executions).

43. Mr. Despouy's updated report on human rights and states of emergency (E/CN.4/Sub.2/1989/30/Rev.1) dealt with an extremely important question, since the sole legitimate purpose of the proclamation of a state of emergency should be to ensure better protection of human rights. In that regard, he noted with satisfaction the favourable response that had been given to Mr. Despouy's request for information from Governments which had proclaimed or were maintaining states of emergency in their countries, since the establishment of direct contacts between the Special Rapporteur and those countries was of great potential importance. He also appreciated the assistance that the Special Rapporteur had received from non-governmental organizations, as indicated in paragraph 13 of the report. It was to be hoped that the Centre for Human Rights would provide him with all the assistance that he needed to fulfil his task.

44. The study undertaken by Mr. Chernichenko and Mr. Treat (E/CN.4/1990/34) showed how much progress the United Nations had made in setting standards to guarantee the right to a fair trial, and the analysis contained in chapter V of that report implied that some aspects of that right were non-derogable. Mr. Eide therefore endorsed the recommendation (para. 146) that Mr. Chernichenko and Mr. Treat should work together on a study of that question with a view either to preparing a draft declaration on the right to a fair trial or to seeking other ways to strengthen that right by, for example, establishing procedures under which international legal observers could verify the fairness of trials.

45. Finally, the information provided by non-governmental organizations, concerning the fate, in some countries, of judges and lawyers endeavouring to practise their profession independently and impartially and who fell victim to acts of violence by security forces, death squads or opposition parties showed the extent of the need to protect members of the judiciary more effectively. He therefore shared the opinion expressed by Mr. Joinet in the working paper that the latter had prepared on that question (E/CN.4/Sub.2/1990/35), to the effect that the Sub-Commission should leave the task of standard-setting and reporting to the Crime Prevention and Criminal Justice Branch at Vienna and concentrate its efforts on monitoring the proper administration of justice. He therefore supported the proposal that a member of the Sub-Commission should prepare a report analysing United Nations advisory services and technical assistance programmes to promote the independence of judges and lawyers and bringing to the Sub-Commission's attention cases in which positive steps had been taken in that connection, as well as measures or situations which constituted extreme violations of the standards in force. In fact, once those standards had been formulated, efforts should be made to ensure that they were put into practice and, to that end, the establishment of a monitoring system was essential.

46. Mr. ALFONSO MARTÍNEZ said that it was virtually impossible to analyse all the reports which members of the Sub-Commission duly submitted every year on agenda item 10. He had been able to study only the reports of Mr. Despouy and Mr. Joinet. It might be necessary for the Sub-Commission to consider some way of easing the task of the experts in that regard.

47. Mr. Joinet had done outstanding work on the question of administrative detention. In particular, in paragraph 67 of his report (E/CN.4/Sub.2/1990/29), he had indicated that the case-law of the Inter-American Court of Human Rights should be studied in greater depth for standard-setting purposes. In fact, administrative detention did not have the same characteristics in every country and every region of the world and, in future, account should be taken of the difference in approach in any in-depth analysis of that question. He believed that the formation of a working group consisting of one member from each geographical region might be the most appropriate way to clarify the various aspects of the problem.

48. Mr. JOINET welcomed the interest shown by the other members of the Sub-Commission in his report on administrative detention (E/CN.4/Sub.2/1990/29). However, he thought that the time had come to conclude that analysis, which he had begun in 1985. At the present time, the establishment of prevention and monitoring mechanisms was more important than the formulation of new standards and he referred the members of the Sub-Commission to the document that would be distributed under the symbol E/CN.4/Sub.2/1990/29/Add.1, in which he proposed various possible options in that connection.

49. With regard to the independence and impartiality of the judiciary, the discussion on the safeguards that should be provided for members of the legal professions had led to the formulation of numerous standards but, there again, priority should be accorded to the monitoring mechanisms and the Sub-Commission would determine whether it should adopt the suggestion that had been made to that effect.

50. Finally, he informed the Sub-Commission that the Working Group on Detention had decided to look into the question of habeas corpus, which had a bearing on the right to a fair trial, as part of its it forthcoming work.

51. Mrs. BAUTISTA, referring to the questions raised by Mr. Despouy, said that, in its resolution 1990/31, the Commission on Human Rights had expressed its grave concern at the situation of United Nations staff members who had been arrested, reported missing or retained against their will in certain countries. In its resolution 44/186, the General Assembly had expressed the same concern and had called upon all Member States scrupulously to respect the privileges and immunities of all officials of the United Nations and its agencies. However, those violations had continued and it might be necessary for the Sub-Commission to recommend that the Commission on Human Rights should consider measures against Member States which had committed those violations, such as a freeze on the recruitment of nationals of those States and the suspension of assistance projects in their favour, while at the same time demanding that they compensate the officials and members of their families whose rights and immunities had not been respected. In fact, regardless of the situation in a particular country, United Nations personnel should unquestionably be permitted to perform their duties and also to leave that country if the United Nations or the agency concerned so decided. The posts occupied by the staff members concerned should not be regarded as vacant until their whereabouts had been ascertained. That recommendation echoed those that had been made by the Federation of International Civil Servants and the

Association for the Security and Independence of International Civil Servants. She thanked the members of the Sub-Commission for their kind comments on the report that she had prepared with the invaluable assistance and co-operation of the Secretariat and those organizations and urged the Sub-Commission to continue to study that problem and to take the requisite decisions in that connection.

52. Mr. DESPOUY thanked Mrs. Bautista for replying so rapidly and competently to some questions on which he had requested clarifications.

53. He also emphasized the interlinkages between the various questions that Mr. Chernichenko and Mr. Treat, Mr. Joinet and himself had examined in their respective reports. In fact, administrative detention measures were often applied during states of emergency, although some domestic laws made provision for such exceptional measures even when states of emergency had not been promulgated. Moreover, the right to a fair trial should be guaranteed even during a state of emergency in order to ensure that persons were tried impartially and that their fate would not depend on an arbitrary decision by the authorities. It would therefore be helpful if the three rapporteurs concerned could co-ordinate their work and give joint consideration to all those questions.

54. Although he would continue to update his report, he was planning primarily to submit to the next session of the Sub-Commission a model legal framework that could serve as a guideline for the establishment of standards or the revision of domestic laws. In that way, States drafting new laws would be able to base them on international principles.

55. Finally, he thanked all the non-governmental organizations which had co-operated in the preparation of his report and he expressed the hope that the Secretariat would be able to continue helping him to update his study.

56. Mr. TREAT said that his name should be removed from the list of co-sponsors of draft resolution E/CN.4/Sub.2/1990/L.27. He thanked all the members of the Sub-Commission who had commented on the report that he had prepared with Mr. Chernichenko (E/CN.4/Sub.2/1990/34) on the right to a fair trial and assured them that their comments would be duly taken into account in their next study. He also approved Mr. Despouy's proposal concerning co-ordination of the work of the rapporteurs, which he regarded as highly desirable.

57. Mr. BENHIMA (Observer for Morocco), making a statement equivalent to a right of reply, said that the cases of ill-treatment in Moroccan prisons that had been referred to by the observer for the International Commission of Health Professionals for Health and Human Rights were possibly isolated or negligent acts on the part of some officials. In fact, Morocco would tolerate no obstruction of its efforts to join the ranks of the civilized countries in which the rule of law prevailed. It had signed, and was preparing to ratify, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Moreover, the Penal Code prescribed severe penalties for persons guilty of inhuman treatment at the preliminary investigation stage, as well as stringent measures against any officials or auxiliary personnel who exceeded their authority or committed professional misconduct.

58. With regard to conditions of detention and incarceration, during the investiture of the Advisory Council on Human Rights, H.M. King Hassan II had specified the rights of detainees and had stressed the need to meet all the requirements for the safeguard of their dignity. Moreover, the observer for the above-mentioned non-governmental organization had nevertheless referred to the increasing awareness of human rights in Morocco, thereby acknowledging that country's endeavours to promote respect for human rights.

59. Mr. JOSIAH (Observer for Kenya), making a statement equivalent to a right of reply, protested against some unfounded allegations that had been made against his country by non-governmental organizations which were obviously ignorant of the prevailing situation in Kenya.

60. His country's Government staunchly believed that respect for human rights and the rule of law were prerequisites for an open and democratic society. The Kenyan Constitution contained a code of fundamental rights and freedoms and the relevant organic law defined the machinery for their enforcement. Kenya was also a party to the International Covenant on Economic, Social and Cultural Rights, as well as the International Covenant on Civil and Political Rights, and had ratified the Universal Declaration of Human Rights.

61. Kenya's judiciary was fully independent and its judges handed down their sentences without favour or fear. That independence also enabled the courts to discharge their primary responsibility of ensuring respect for the provisions of the law without fear of interference by third parties.

62. The acts committed by a small group aiming at subverting the authority of the Government had forced the latter to arrest three individuals for offences prejudicial to State security and the well-being of the citizens. In such cases, the law stipulated that an investigation must be conducted in order to establish the grounds for detention. The detainee review tribunal also re-examined such cases periodically. It was therefore incorrrect to claim that those three persons had been detained unlawfully.

63. The group of lawyers who had been placed in detention for purposes of interrogation had been released as soon as their cases had been reviewed. He emphasized, however, that those lawyers had been arrested for their suspected involvement in subversive activities and not for their professional conduct, as some had alleged.

64. Everyone knew that, in an ordered society, the authorities must make every effort to achieve a balance between the respective rights and freedoms of all its members. Indeed, the freedom of each individual depended on the extent to which he respected that of others. Every Government therefore had a paramount duty to ensure that the security of the State was not endangered by any group that transgressed the rights and freedoms recognized by the law.

65. Mr. DAYAL (Observer for India), making a statement equivalent to a right of reply, refuted the manner in which Amnesty International had attempted to portray administrative detention in his country. The statement that the observer for that organization had made under item 10 implied that detainees could be deprived of all contact with the outside world for weeks. However, under the applicable legislation, the grounds for administrative detention had

to be furnished within five days of the date of detention. The detainee could then appeal to an advisory board consisting of three judges, including one High Court judge. The appellant could be kept in detention only if the advisory board upheld that detention.

66. According to Amnesty International, torture was still practised in India and, in some cases, had resulted in death. However, that organization had provided no details to substantiate such an allegation. Under Indian law, a police officer was forbidden to use more than the minimum force needed to deal with a particular situation. The Government had also issued directives to police personnel to refrain from methods of interrogation that could constitute acts of torture. A number of cases had demonstrated the fact that, within the context of its democratic system, India had a network of safeguards to prevent violations of human rights. The full freedom enjoyed by the press, public opinion and various institutions bore witness to the vibrant nature of Indian democracy. In spite of all those safeguards, it was not impossible that a detainee might be tortured. However, that would constitute only an isolated case.

67. Amnesty International had erroneously maintained that allegations of torture were rarely investigated in India. Even allegations of torture that were reported in the press led to judicial investigations and proceedings were immediately brought against any civil servant found to be remiss in his duty. Any person was authorized to give testimony in favour of a relative or friend before the courts supervising the proper conduct of the investigation. If the investigation showed that a police officer was guilty of acts of torture, he was liable to exemplary punishment. Compensation was also payable to the victims of such acts.

68. Mr. IBRAHIM (Observer for Indonesia), making a statement equivalent to a right of reply, regretted that some individuals had taken advantage of the opportunity to be heard by the Sub-Commission in order to launch slanderous attacks on States.

69. The so-called restriction on lawyers was of a quite exceptional nature, since it merely prohibited lawyers registered in one high court jurisdiction from practising law in another region. The sole purpose of that regulation was to ensure an equitable distribution of lawyers within the country. Similar measures were undoubtedly applied in many other countries.

70. With regard to the allegations of violations of human rights, which had been made in the form of "testimony", he pointed out that the speaker concerned had evidently confused the exercise of fundamental rights with the violation of the legislation in force. It should be borne in mind that the speaker in question had himself been convicted of breaking the law in his country. The very fact that he could today appear in person to make his allegations before the Sub-Commission tended to prove that freedom of movement was far from restricted in Indonesia.

71. Mr. BLAVO (Observer for Ghana), making a statement equivalent to a right of reply, referred to the statement made by the observer for the International Commission of Jurists, who had implied that the President and the Secretary of the Bar Association had been arrested without charge while they sought to commemorate the murder in 1982 of three High Court judges.

72. He pointed out that, when the event had been announced, the authorities had warned its organizers against commemorating an event that had taken place several years ago and which, in addition to reopening old wounds, might also prove prejudicial to the spirit of reconciliation that the Head of State was endeavouring to promote in the country. However, that warning had not been heeded. Fearing a breach of public order, the authorities had felt obliged to apprehend the organizers of that event, which obviously had nothing to do with their profession. Moreover, the persons concerned had been detained only for a very short time. The Bar Association was continuing its activities and had recently held its annual meeting.

73. Recalling that the Sub-Commission had invited the observers for Amnesty International to provide more detailed information concerning the prisoners of conscience who were allegedly detained in Ghana, he indicated that he would reply to those allegations only when that information had been communicated.

74. Mr. TAUCHI (Observer for Japan), making a statement equivalent to a right of reply, said that he wished to provide some clarifications in response to the remarks that had been made by the observers for International Educational Development and the International League for Human Rights, concerning the extradition of the Chinese hijacker, Zhang Zhenhai, who had diverted a commercial aircraft, thereby endangering human lives. In accordance with the provisions of the Hague Convention for the Suppression of Unlawful Seizure of Aircraft of 16 December 1970, the Japanese Government could prosecute or extradite. After carefully considering the matter, the Tokyo High Court had ruled that the offence was not of a political nature and therefore did not fall within the purview of the Convention relating to the Status of Refugees. It had therefore decided to extradite Zhang Zhenhai to China.

75. With regard to the Japanese prison system, he emphasized that all arrests and detentions in Japan were subject to strict control by the judicial authorities, which were independent of the Government. Any person who had been indicted and detained could appeal against his detention order and request its annulment or modification. The accused person's right to contact his defence counsel was also duly respected.

76. Mr. CRUZ (Observer for Chile), making a statement equivalent to a right of reply, defined the Chilean Government's position in regard to the political prisoners to whom an observer for the International Association Against Torture had referred.

77. He indicated that, since its investiture on 11 March 1990, his country's Government had accorded priority to the task of restoring the rule of truth and justice through reconciliation, which was particularly difficult after 17 years of dictatorship. It had undertaken to ensure respect for democracy and the rule of law. The executive, legislative and judicial authorities each had a clearly defined sphere of competence and the Government could not encroach on any sphere for which it was not directly responsible. A Commission of Truth and Reconciliation (Comisión de verdad y de reconciliación), consisting of eminent experts on human rights, had been instructed to investigate the most serious violations of human rights that had been committed in the country and should complete its work within the next five months.

78. Since taking office, President Aylwin had undertaken to release all the political prisoners who were incarcerated in the country and the vast majority of whom had never been brought to court. That situation had made the Government aware of the shortcomings of the law currently in force. A number of bills had therefore been brought before the Congress and were currently being considered by the Senate, after being adopted by the House of Representatives. Those bills provided for the abolition of the death penalty and the amendment of several earlier legislative instruments, such as the Anti-Terrorist Act, the Firearms Control Act, the State Internal Security Act and the Codes of Military Justice and Criminal Procedure. Once those legislative reform bills had been passed, they should enable the Government to deal with the cases that had not yet been brought to court.

79. The Chilean Government was making every effort to solve those problems, with due respect for the Constitution, in order to promote the rule of law and democracy in the country.

80. The CHAIRMAN said that the Sub-Commission had thus concluded its consideration of items 10 and 11.

The public meeting rose at 12.45 p.m.